



# The impact of child protection mediation in public law proceedings on outcomes for children and families

## Rapid evidence review summary

### Focus

This summary highlights the main findings of a rapid evidence review undertaken by Emma Retter (Research Analyst, SafeLives), Catrin Wallace (Research Assistant, Children's Social Care Research and Development Centre (CASCADE), Cardiff University) and Judith Masson (Professor of Socio-Legal Studies, Bristol University).

### Recommended citation

Retter, E., Wallace, C., and Masson, J. (2020). *The impact of child protection mediation in public law proceedings on outcomes for children and families*. Rapid evidence review summary. London: Nuffield Family Justice Observatory.

Full report available from: [www.nuffieldfjo.org.uk](http://www.nuffieldfjo.org.uk)

October 2020

Key research findings	2
Data gaps and future priorities	3
Recommendations	4
References	5

There has been some interest in piloting child protection mediation in public law in England and Wales, including from the Family Justice Council (FJC), and notably since the publication of the Care Crisis Review in 2018 (Family Rights Group 2018, p. 36). This briefing paper summarises the findings of a rapid evidence review that aimed to uncover what we know about the impact of child protection mediation from three countries where it has already been implemented— Australia, Canada and the United States.

The review synthesises the findings from 17 individual studies, in response to the following research questions:

- what are children and families' experiences of child protection mediation?
- what are the outcomes for those who use it?
- what are the key enablers that support positive outcomes for children and their families?
- what can be considered best practice for setting up child protection mediation services?

## Key research findings

This paper summarises the findings of a rapid evidence review on the procedure and practice of child protection mediation, outcomes and the experiences of families and children in Australia (1 included study), Canada (2) and the United States (14).

Child protection mediation was introduced in these countries in response to the adversarial nature of child protection proceedings, increasing numbers of cases, the need to reduce the length of proceedings, the lack of quality legal representation for parents and reductions in funding.

The findings of the full review aim to help inform any future development of child protection mediation services in England and Wales, and to identify the gaps in the research with a view to prioritising areas for further enquiry.

### Parents were satisfied with child protection mediation

- There is consistency across the literature that child protection mediation programmes are more inclusive of families than traditional court proceedings, which do not provide a space for families to take part in decision-making.
- There is further consistency that families feel child protection mediation places the best interests of the child at the centre.
- However, while families seemed broadly satisfied with child protection mediation, there were significantly divergent views across the studies. This could be owing to the relationship between the family and children's social care, the (sample of) families who responded to surveys, and/or their case outcomes. It appeared that where families had negative perceptions of child welfare services and professionals before mediation, this was likely to continue after mediation. This was commonly cited by families who did not have a positive experience of child protection mediation.

### What is child protection mediation?

Child protection mediation is described by Dobbin, Gatowski and Litchfield as:

*a confidential process in which a specifically trained neutral third party who has no authoritative decision-making power (the mediator) assists the family, social worker, attorneys, and other interested parties in a case to talk out and develop their own mutually acceptable agreements with respect to issues relevant to an abuse and neglect case before the court. The goal of child welfare mediation is to develop a plan which everyone agrees is safe and in the best interests of the child, and safe for all the involved adults (2001, p. i).*

Child protection mediation facilitates family inclusivity in decision-making and can take place at any point in the child protection proceedings, but most commonly occurs either at the start of proceedings or after a fact-finding hearing. Referrals to mediation are made by the court and screening for characteristics which are inappropriate for mediation are undertaken by a judge or a mediator.

In England and Wales, mediation has been used in private family law proceedings instead of or in addition to court proceedings. Before an application for private Children Act proceedings is made, the applicants must attend a mediation information assessment meeting unless there has been domestic abuse in the relationship, other serious welfare concerns, or the matter is urgent. There is no similar requirement for the use of mediation within public family law proceedings.

Alternative terminology includes: child welfare mediation; dependency mediation; and alternative dispute resolution (ADR) in child protection proceedings.

### **Child protection mediation is more efficient than traditional court proceedings and more likely to help families reach some form of agreement**

- Where agreements were made through mediation, fewer court hearings took place and families spent less time in proceedings. However, in the studies reviewed, only one had a random referral to mediation (Gatowski et al. 2005). Consequently, it is not possible to exclude bias in relation to the cases and parents referred to mediation and the findings presented.
- There is little consensus as to whether full or partial agreement is most common for mediation families. However, families that went through child protection mediation were more likely to reach some form of agreement than those that did not.
- Contact and child living arrangements appeared to be the issues most likely to be agreed through mediation—but further research is needed to understand the types of cases that mediation may or may not work for.
- Reunification with parents/guardians and adoption were often cited as the most common permanency goal. However, there is no consistency in the literature that these goals are directly attributable to child protection mediation alone. Many factors—such as a child’s age, ethnicity, and complexity of issues, together with the availability of carers within the family—are at play in determining a case’s permanency outcome.

### **Effective, independent and trained mediators and professionals are key**

- Mediators can be powerful enablers of successful child protection mediation but can also hinder the process if inexperienced and lacking knowledge about the families and issues before them. Lack of training for professionals, not having enough time to prepare for each conference, tension between professionals, and a lack of clear

protocols around programme operation and confidentiality are key issues.

- The distinction between the adversarial system that characterises court proceedings and the inclusive nature of child protection mediation can be difficult for some professionals to adapt to. Therefore, ongoing training about how to behave and work with families in child protection mediation was noted as essential in many studies.
- Trust in the independence of child protection mediation is key—many families view child welfare services with suspicion. This can upset the balance of power and cause families to disengage when mediation is facilitated by professionals from child welfare services.

### **Data gaps and future priorities**

- There is a paucity of literature on the actual experiences of children.
- The review was not able to compare the effectiveness of child protection mediation with other approaches to engaging families, reducing conflict and making decisions in child protection cases. None of the studies was a randomised control trial (RCTs), which would have allowed comparison with ‘business as usual’, nor was it clear what alternative or additional services existed alongside child protection mediation in the areas covered in the synthesised studies.
- The evidence suggests that child protection mediation is more effective in cases where the issues presented are more ‘straightforward’, such as establishing contact arrangements, as opposed to complex cases such as child maltreatment, neglect, alcohol dependency, and substance abuse.
- More research is needed to measure the longitudinal effects of child protection mediation on children coming back into the social care system, either for services and support or for care proceedings.

## Recommendations

The review gives rise to a number of factors worth considering in terms of resourcing a potential pilot or establishing a service.

### Budgeting and forecasting demand

- Before resources are committed to a pilot, a realistic assessment of the cost of a child protection mediation service is essential, together with a clear plan for future funding. It was clear from the review of the evidence that some child protection mediation services had not been sustained after their initial funding.
- It is not possible to identify the scale of demand without a pilot—and demand is likely to change over time. Any plans for a sustainable service will need to consider a range of figures for usage.

### Defining and supporting service delivery

- In addition to securing funding, setting service parameters and identifying the organisation(s) responsible for delivery and development will be key.
- Service protocols and other materials should be prepared by a multi-disciplinary team with experience of care proceedings, guided by the Family Mediation Council. The team could draw on the good practice materials developed for, and endorsed by, the National Council of Juvenile and Family Court Judges in the United States.
- The review underscores the critical importance of obtaining support from stakeholders—in both pilot and full service contexts. In England and Wales, this should include at least the judiciary, Association of Directors of Children's Services (ADCS), Cafcass and Cafcass Cymru, and the Association of Lawyers for Children. These stakeholders will be crucial in securing buy-in and helping to establish key aspects of the service, including the selection and training of mediators.

- Child protection mediation services will only be sustained if they continue to attract referrals, and the mediations themselves are both effective and viewed positively by stakeholder organisations and the individuals involved. Policies to promote services are unlikely to be effective unless parents, children, professionals, and those responsible for protecting children—and/or making decisions relating to care proceedings—believe that child protection mediation services offer something better.
- The pilot budget should include adequate funding for research which, alongside evaluation and surveys, includes: a comparison of experiences, process and outcomes in cases where mediation was and was not used; and involves a sufficient number of cases. Any 'roll out' of child protection mediation services should be informed by the evidence.

### Situating child protection mediation amongst other types of services

- Consideration should be given as to whether some benefits of mediation could be achieved by developing systems and services that already exist—including the pre-proceedings process, family group conferences (FGCs) and issues resolution hearings (IRHs). While none of these are directly comparable to mediation for child protection cases, they are helping to engage parents and/or families, reduce conflict and contribute to timely decision-making. For example, pre-proceeding meetings could have neutral chairs and place more emphasis on developing written agreements *with* parents.
- Consideration needs to be given to how best to rationalise services so that all their advantages are maximised and repeated demands to engage are not placed on parents, families, local authorities and professionals.

## References

Dobbin, S., Gatowski, S., and Litchfield, M. (2001). The Essex County child welfare mediation program: evaluation results and recommendations. *Technical Assistance Bulletin*, 5 (4). Reno (Nevada): National Council of Juvenile and Family Court Judges.

Family Rights Group, (2018). *Care Crisis Review: options for change*. London: Family Rights Group.

*See the main report for the full list of studies that informed the review. Available from: [www.nuffieldfjo.org.uk](http://www.nuffieldfjo.org.uk).*

## **About the Nuffield Family Justice Observatory**

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare, and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

Nuffield FJO has funded this project, but the views expressed are those of the authors and not necessarily those of Nuffield FJO or the Foundation.

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